

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

74-2311

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

-against-

AMADEO AUGUSTO LUCIANO SANTELISES,

Defendant-Appellant.

*On Appeal From An Order of The United States
District Court for the Southern District of New York*

Appellant's Appendix

AUSTIN T. FRAGOMEN, JR.
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PAGINATION AS IN ORIGINAL COPY

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PERTINENT DOCKET ENTRIES

CASE NO. 74 014 2494

JUDGE TENNEY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA

v.

AMADEO AUGUSTO LUCIANO SANTELISES

Defendant

----- X

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NOTICE OF MOTION

- - - - - X

SAME TITLE

- - - - - X

BEFORE HON. CHARLES H. TENNEY,

PLEASE TAKE NOTICE, that upon the annexed petition of Amadeo Augusto Luciano Santelises, duly verified the 4th day of June, 1974, the annexed Affidavit of Martin L. Rothstein, Esq., duly sworn to the 5th day of June, 1974, and upon all of the papers and proceedings hereto had herein, the undersigned will move this Court at a Term for Motion to be held in Room 1904 of the United States District Court for the Southern District of New York, Foley Square, City and State of New York, on the 26th day of June, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order vacating and setting aside the judgment of conviction and sentence imposed upon the petitioner, under counts 18 and 19 of the indictment 65 Cr. 653, and for such other and further relief which this Court may deem just and proper.

Dated: New York, N.Y.
June 5, 1974

Yours, etc.,

TO: PAUL J. CURRAN
United States Atty.
Southern District
of New York
Foley Square
New York, N.Y. 10007

FRIED, FRAGOMEN & DEL REY, P.C.
515 Madison Ave.
New York, N.Y. 10022
Tel. No. 212-688-8555
Attorneys for Petitioner

By

MARTIN L. ROTHSTEIN

AFFIDAVIT OF MARTIN L. ROTHSTEIN IN SUPPORT

- - - - - X

SAME TITLE

- - - - - X

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

MARTIN L. ROTHSTEIN, being duly sworn, deposes
and says:

1. I am an attorney associated with the firm of Fried, Fragomen & Del Rey, P.C., attorneys for petitioner, and I make this affidavit in support of the petition filed pursuant to 28 U.S.C., Sec. 1651(a), for a Writ of Error Coram Nobis, vacating and setting aside the judgment of conviction and sentence imposed upon the petitioner, on counts 18 and 19 of the above referenced indictment, and for such other and further relief which the Court may deem just and proper.

2. The petitioner, Amadeo Augusto Luciano Santelises, is a lawful permanent resident of the United States, residing in the United States with his wife and American citizen child. On July 16, 1965, the petitioner was charged, in an indictment filed in the Southern District of New York, with various offenses connected with the preparation and use of false immigration documents. On December 7, 1965, the petitioner, appearing with his

AFFIDAVIT OF MARTIN L. ROTHSTEIN IN SUPPORT

attorney, Mr. Robert Mitchell, pleaded guilty to fourteen counts of the indictment, three of which contained an allegation of violation of 18 U.S. Code, Section 1546.

On January 28, 1966, sentence was suspended and the petitioner was placed on probation for a period of one year. The period of probation was satisfactorily completed on January 27, 1967.

3. On June 9, 1966, deportation proceedings were commenced by the Immigration & Naturalization Service on the ground that petitioner is subject to deportation upon order of the Attorney General, pursuant to Section 241(a)(5) of the Immigration & Nationality Act, 8 U.S.C., Sec. 1251(a)(5), as a person who has been convicted under 8 U.S.C., Sec. 1546, and was found deportable under that Section, for which there is no administrative relief available.

4. On April 10, 1972, the petitioner brought a previous petition before this Court to set aside his plea of guilty to counts 18 and 19 of the 1965 indictment. The District Judge concluded that jurisdiction existed under 28 U.S.C., Sec. 1651(a), and treated the petition as a request for a Writ of Error Coram Nobis. In this petition, the petitioner urged that his plea of guilty to counts 18 and 19 of the 1965 indictment was not knowingly and voluntarily tendered, because he was not

AFFIDAVIT OF MARTIN L. ROTHSTEIN IN SUPPORT

informed that deportation was a consequence of such conviction. The Court rejected this claim without holding a hearing. As discussed more fully in the accompanying Memorandum of Law, the Court's dismissal of the petition, and the subsequent affirmance of that action by the U. S. Court of Appeals for the Second Circuit, was based, in large measure, upon the failure of the petitioner to submit an affidavit from the attorney who represented him at the time of his plea, in support of the allegation that the petitioner was unaware of the consequences of his plea. The Court of Appeals also noted that the petitioner had failed to make out any claim of lack of effective assistance of counsel. U.S. v. Santelises, 476 F.2d 787 (1973). It is clear from the statements of the Court discussed in the Brief herein, that the petitioner is not barred by the previous ruling, from the filing of a new petition containing the elements which were held to be missing from the first petition.

5. Appended to the present petition is the sworn Affidavit of Robert Mitchell, the attorney who represented the petitioner before the United States District Court for the Southern District of New York, at the time of his plea of guilty to various counts of the 1965 indictment. The affidavit indicates that in conferences between the petitioner and his counsel,

AFFIDAVIT OF MARTIN L. ROTHSTEIN IN SUPPORT

the petitioner was never informed that, as an alien present in the United States, he would be subject to deportation upon order of the Attorney General, after a conviction under 18 U.S.C., Sec. 1546, and that to the knowledge of the affiant, the petitioner was completely unaware of such consequences.

6. On the basis of the above, it is respectfully submitted that the allegations made in the present petition, together with the supporting Affidavit of Robert Mitchell, Esq., support petitioner's request for a full hearing before the Court, in order to determine whether his plea of guilty to counts 18 and 19 of the 1965 indictment, was knowingly made in the absence of the consequences thereof, and in the absence of the effective assistance of counsel. It is respectfully submitted that under the decision of the United States Court of Appeals in U.S. v. Santelises, supra, the petitioner has demonstrated his right to a full hearing on the matters raised herein.

s/Martin L. Rothstein
MARTIN L. ROTHSTEIN

Sworn to
June 5, 1974

PETITION

- - - - - X

SAME TITLE

- - - - - X

BEFORE HON. CHARLES H. TENNEY

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

The petition of AMADEO AUGUSTO LUCIANO SANTE-
LISES, respectfully state as follows:

1. That your petitioner is unjustly and unlawfully subject to a final order of deportation as the result of an illegal judgment of conviction and sentence imposed upon him in the United States District Court for the Southern District of New York, on the 28th day of January 1966.

2. That your petitioner is 44 years old, born in Santo Domingo, Dominican Republic and first entered the United States as a lawful resident alien on February 6, 1960, that he has resided in the United States ever since and that he is the spouse and father of American citizens, that his deportation for an illegal conviction which did not even warrant any detention would visit the greatest hardship not only upon your petitioner, but upon his family who would be permanently separated from him or permanently banned from the United States, their native country.

PETITION

3. That on the 16th day of July 1965, an indictment was filed in the United States District Court for the Southern District of New York charging your petitioner with the following crimes:

a) Title 18 United States Code Section 1001 - use of false writings or false statements in an Immigration Matter (Counts 1 through 17).

b) Title 18 United States Code Section 1546 - fraud and misuse of visas, permits and other entry documents (Counts 18, 19 and 20).

c) Title 18 United States Code Section 1015 - making false statements regarding an affidavit of support on behalf of an alien (Counts 21 through 27).

The said indictment number was 65 Cr. 653. A copy of said indictment, marked Exhibit "I" is attached hereto as part of this petition.

4. That on the 27th day of July 1965, your petitioner was arraigned on the above indictment. He pleaded not guilty and was released on bail in the sum of \$1,000.00

5. That thereafter on December 7, 1965, your petitioner appeared in the United States District Court for the Southern District of New York before Hon. Charles H. Tenney. On that date petitioner withdrew his previous

PETITION

plea of not guilty and entered a plea of guilty to Counts 1 through 8, Counts 18 and 19 and Counts 21 through 24.

6. That on the 28th day of January 1966, your petitioner appeared for sentence in the United States District Court for the Southern District of New York, before Hon. Sidney Sugarman. On that date the imposition of sentence was suspended and your petitioner was placed on probation for a period of one year on each count to run concurrently.

7. That no appeal was taken from the judgment of conviction or sentence imposed as the result of your petitioner's guilty plea.

8. That on January 27, 1967, your petitioner's term of probation was terminated satisfactorily.

9. That on June 9, 1966, proceedings were instituted by the Immigration & Naturalization Service of the United States Department of Justice to deport your petitioner on the grounds that (a) he is a citizen of the Dominican Republic, having entered the United States as a permanent resident on or about February 6, 1960, (b) he was convicted under Section 1546 of Title 18, United States Code (under Counts 18 and 19 of the above mentioned indictment), and (c) he is, therefore,

PETITION

subject to deportation pursuant to the provisions of Section 241(a)(5) of the Immigration & Nationality Act (Section 1251(a)(5) of Title 8, United States Code).

10. That after a hearing before a Special Inquiry Officer of the Immigration & Naturalization Service, an order was entered on October 9, 1967, finding your petitioner to be deportable as charged. This order was based solely upon your petitioner's plea of guilty to Section 1546 of Title 18 United States Code, that the language of Section 241(a)(5), (8 U.S.C. 1251(a)(5)), taken in conjunction with other provisions of the Immigration & Nationality Act bars any discretionary relief for deportability under that section and in the opinion of the U.S. Department of State also makes the petitioner mandatorily excludable under Section 212(a)(31), (8 U.S.C. 1182(a)(31)).

11. That all administrative remedies have been exhausted and that a petition for review of the above mentioned deportation order was denied by the Court of Appeals of the Second Circuit, and that the petitioner at present is under final order of deportation.

12. That your petitioner was represented by Robert Mitchell, Esq. of 61 Chambers Street, New York City at the time of his pleading guilty, and sentence in the Federal District Court for the Southern District

PETITION

of New York. That Mr. Mitchell never discussed with petitioner or mentioned to him the existence of legal authority mandating deportation upon order of the Attorney General as the result of conviction (pleading guilty) to counts 18 and 19 of the indictment. That as a result of the failure of his counsel to advise him of such consequence, as well as the failure of the Court to do so, petitioner was completely unaware of such consequences prior to the institution of deportation proceedings against him. Attached hereto as Exhibit II, is the affidavit of Robert Mitchell, Esq., sworn to on the 6th day of December, 1973, attesting to the fact that said attorney advised your petitioner to enter a plea of guilty to 14 counts of the cited indictment without having informed him that such plea would make him subject to deportation upon order of the Attorney General.

13. That had petitioner been aware prior to pleading guilty to the aforementioned counts of the indictment that a conviction under 28 U.S.C., Sec. 1546 would result in his mandatory deportation upon order of the Attorney General, he would not have pleaded guilty to those sections of the indictment alleging a violation thereof.

PETITION

14. That the failure of his attorney to advise petitioner that deportation was a consequence of his plea of guilty to a violation of 28 U.S.C., Sec. 1546 constituted an effective denial of the assistance of counsel to your petitioner at the time he entered his plea of guilty.

15. That petitioner previously moved for the present relief in March 1972, in a petition submitted to United States District Judge Charles H. Tenney of this honorable Court; that such petition did not include therein an affidavit from the attorney representing your petitioner at the time he pleaded guilty to the cited indictment; that said petition was dismissed without a hearing being held thereon, by Judge Tenney on October 12, 1972; and that such dismissal was affirmed by the United States Court of Appeals on April 12, 1973.

16. That both the opinion written by the United States District Court for the Southern District of New York, and that written by the Court of Appeals cited, as a reason for denying the previous petition the absence therefrom of the attorney's affidavit which is appended to this petition as Exhibit II.

WHEREFORE, your petitioner respectfully prays that the judgment of conviction and sentence imposed upon him under Counts 18 and 19 of the aforesaid indictment (65 Cr. 653) on Jan. 28, 1966, be vacated and set aside.

Sworn to

s/Amadeo Luciano
Petitioner

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-v-

AMADEO AUGUSTO LUCIANO-SANTELISES,
also known as Amadeo Luciano, and RAYMOND
COLON,

INDICTMENT

65 Cr.653

Defendants.
-----x

The Grand Jury charges:

On or about the 29th day of November, 1962, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Ana Vargas-Rodriguez for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, an affidavit of support, dated May 3, 1962 and signed by Deidamia Polanco, stating that the said Deidamia Polanco and the said Ana Vargas-Rodriguez had been good friends for the past fifteen years, that the said Deidamia Polanco was employed by Furniture Manufacturing Company, Inc., 136 Jackson Street, Brooklyn 11, New York at a salary of \$65.00 a week, that she had a savings account with Bankers Trust Company, 2520 Broadway, New York, New York with a credit balance of \$1,908.75, and that she promised to maintain and

INDICTMENT

the said Ana Vargas-Rodriguez and to save harmless the United States of America from her becoming a public charge, whereas, in truth and in fact, as the said defendant then and there well knew, the said Deidamia Polanco had never been a friend of the said Ana Vargas-Rodriguez, she was not so employed, she did not have a savings account with a credit balance of \$1,908.56 deposited by and belonging to her, and she did not intend to support and maintain the said Ana Vargas-Rodriguez and to save harmless the United States of America from her becoming a public charge.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

SECOND COUNT

The Grand Jury further charges:

On or about the 8th day of January, 1963, in the Southern District of New York and in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Luisa Elena Rojas for a permanent resident visa made to the American Consulate, Quebec, Canada, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated December 19, 1962 and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Luisa Elena Rojas as

INDICTMENT

a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, as the defendant then and there well knew, the said company was not willing to provide such employment to the said Luise Elena Rojas.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

THIRD COUNT

The Grand Jury further charges:

On or about the 11th day of March, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Ramon Antonio Fabian for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated January 8, 1963 and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Ramon Antonio Fabian as a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, as the defendant then and there well knew, the said company was not willing to provide such employment to the said Ramon Antonio Fabian.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

INDICTMENT

FOURTH COUNT

The Grand Jury further charges:

On or about the 11th day of March, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Ramon Antonio Fabian for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, an affidavit of support, dated January 8, 1962 and signed by Griselda del Carman Guerrero, stating that the said Griselda del Carman Guerrero and the said Ramon Antonio Fabian had been good friends for the past ten years, that the said Griselda del Carman Guerrero had a savings account with First National City Bank, Broadway and 86th Street, New York, New York, with a credit balance of \$1,555.52, and that she promised to maintain and support the said Ramon Antonio Fabian and to save harmless the United States from the said Ramon Antonio Fabian becoming a public charge, whereas, in truth and in fact, as the said defendant then and there well knew, the said Griselda del Carman Guerrero had never been a friend of the said Ramon Antonio Fabian, she did not have a savings account with a credit balance of \$1,555.52 deposited by and belonging to her, and she did not intend to maintain or support the said Ramon Antonio Fabian or to save

INDICTMENT

harmless the United States from the said Ramon Antonio Fabian becoming a public charge.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

FIFTH COUNT

The Grand Jury further charges:

1. On or about the 17th day of April, 1963, in the Southern District of New York and in a matter within the jurisdiction of the Immigration and Naturalization Service, United States Department of Justice, to wit, the determination of whether one Fanny Roman who was applying for status as a permanent resident, was likely to become a public charge, AMADEO AUGUSTO LUCIANO-SANTELISES' also known as Amadeo Luciano, the defendant, unlawfully, wilfully and knowingly did falsify, conceal and cover up, and cause to be falsified, concealed and covered up by a trick, scheme and device, a material fact, to wit, that the said Fanny Roman had savings of approximately \$40 in a savings account at the Central Savings Bank, Broadway and 73rd Street, New York, New York.

2. As a part of such trick, scheme, and device, the said defendant deposited \$1,005.00 not belonging to the said Fanny Roman in the said savings account.

3. As a further part of such trick, scheme and device, the said defendant obtained a letter from the said bank representing that as of April

INDICTMENT

11, 1963, the savings account in the name of Fanny Roman had a balance of \$1,045.09.

4. As a further part of such trick, scheme, and device, the said defendant submitted the said letter and caused it to be submitted to the said Immigration and Naturalization Service.

(Title 18, United States Code, Sections 1001 and 2.)

SIXTH COUNT

The Grand Jury further charges:

On or about the 17th day of April, 1963, in the Southern District of New York and in a matter within the jurisdiction of the Immigration and Naturalization Service, United States Department of Justice, to wit, the application of Fanny Roman for status as a permanent resident, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated April 10, 1963 and signed Chris Stefanoue as owner of the Victory Coffee Shop, 968 Amsterdam Avenue, New York, New York, stating that the said coffee shop was willing to provide permanent employment to the said Fanny Roman as a cashier at a salary of \$50.00 a week, whereas, in truth and in fact, as the said defendant then and there well knew, the said coffee shop was not willing

INDICTMENT

to provide such employment to the said Fanny Roman.

(Title 18, United States Code, Sections 1001 and 2.)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 9th day of May, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Antonio R. Breton for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, an affidavit of support, dated May 7, 1962 and signed by Genaro Placido, stating that the said Genaro Placido and the said Antonio R. Breton had been good friends for the past ten years, that the said Genaro Placido had a savings account with Central Savings Bank, Broadway and 73rd Street, New York, New York, with a credit balance of \$2,609.26, that he had no persons dependent upon him for support and that he promised to maintain and support the said Antonio R. Breton and to save harmless the United States from his becoming a public charge, whereas, in truth and in fact, as the said defendant then and there well knew, the said Genaro Placido had never been a friend of the said

INDICTMENT

Antonio R. Breton, he did not have a savings account with a credit balance of \$2,609.26 deposited by and belonging to him, he did have persons dependent upon him for support, and he did not intend to maintain and support the said Antonio R. Breton and to save harmless the United States from his becoming a public charge.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

EIGHTH COUNT

The Grand Jury further charges:

On or about the 13th day of May, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Oceania Guerrero de Puello for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEA AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated April 25, 1963 and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Oceania Guerrero de Puello as a machine operator at a salary of \$50.00 a week, whereas, in truth and in

INDICTMENT

fact, as the said defendant then and there well knew, the said company was not willing to provide such employment to the said Oceania Guerrero de Puella.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

NINTH COUNT

The Grand Jury further charges:

On or about the 14th day of May, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Ana Vargas-Rodriguez for an immigrant visa, made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated November 26, 1962 and signed by Frank Bacz as bookkeeper of the Caribe Sportswear Company, 962 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Ana Vargas-Rodriguez as a machine operator at a starting salary of \$50.00 a week, whereas, in truth and in fact, as the said defendant then and there well knew, the said company was not willing

INDICTMENT

to provide such employment to the said Ana Vargas-Rodriguez.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

TENTH COUNT

The Grand Jury further charges:

On or about the 21st day of May, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Criselda Villavizar de Nolasco for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated May 13, 1963 and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Criselda Villavizar de Nolasco as a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, as the said defendant then and there well knew, the said company was not willing to provide such employment to the said Criselda Villavizar de Nolasco.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

INDICTMENT

ELEVENTH COUNT

The Grand Jury further charges:

ON or about the 11th day of June, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Maria Josefa Perez for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES' also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated March 21, 1963, and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Maria Josefa Perez as a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, as the said defendant then and there well knew, the said company was not willing to provide such employment to the said Maria Josefa Perez.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

TWELFTH COUNT

The Grand Jury further charges:

INDICTMENT

On or about the 17th day of June, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Altagracia A. Lara for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, a letter, dated April 11, 1963 and signed by Frank Baez as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Altagracia A. Lara as a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, as the said defendant then and there well knew, the said company was not willing to provide such employment to the said Altagracia A. Lara.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

THIRTEENTH COUNT

The Grand Jury further charges:

On or about the 17th day of June, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit,

INDICTMENT

the application of Altagracia A. Lara for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES' also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit .an affidavit of support, dated April 12, 1963 and signed by Carmen Sanchez de Caminero, stating that the said Carmen Sanchez de Caminero had no persons dependent upon her for support, whereas in truth and in fact, as the said defendant then and there well knew, the said Ca.men Sanchez de Caminero did have persons dependent upon her for support.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about the 26th day of June, 1963, in the Southern District of New York, in a matter within the jurisdiction of the Immigration and Naturalization Service, United States Department of Justice, to wit, the application of Aura Martina Hernandez to extend the time of a temporary stay, AMADEO AUGUSTO LUCIANO-SANTELISES' also known as Amadeo Luciano, the defendant, unlawfully, wilfully and knowingly did make, and cause to be

INDICTMENT

made, a false, fictitious and fraudulent statement and representation in the said application to the effect that the said Aura Martina Hernandez was not and had not been employed or engaged in business in the United States, whereas in truth and in fact, as the said defendant then and there well knew, the said Aura Martina Hernandez had been and was then employed in the United States.

(Title 18, United States Code, Sections 1001 and 2.)

FIFTEENTH COUNT

The Grand Jury further charges:

On or about the 11th day of July, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Dionisia Gil for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES' also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, an affidavit of support, dated April 24, 1963, and signed by Lucila A. Urena-Valdez, stating that the said Lucila A. Urena-Valdez and the said Dionisia Gil had been close friends for the past ten years, that the said Lucila A. Urena-Valdez had a savings account with Central Savings Bank,

INDICTMENT

Broadway dn 73rd Street, New York, New YOrk with a credit balance of \$2,006.36, that she had no person dependent upon her for support, and that she guaranteed to save harmless the United States from the said Dionisia Gil becoming a public charge, whereas, in trust and in fact, as the said defendant then and there well knew, the said Lucila A. Urena-Valdez had never been a friend of the said Dionisia Gil, she did not have a savings account with a credit balance of \$2,006.36 deposited by and belonging to her, she did have persons dependent upon her for support, and she did not guarantee to save harmless the United States from the said Dionisia Gil becoming a public charge.

(Title 18, United States Code, Sections 1001, 2 and 3238.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 11th day of July, 1963, in the Southern District of New York and in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Dionisia Gil for a permanent resident visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious

INDICTMENT

and fraudulent statements and entries, to wit, a letter, dated April 23, 1963 and signed by Frank Bacz as bookkeeper of the Caribe Sportswear Company, 972 Amsterdam Avenue, New York, New York, stating that the said company was willing to provide permanent employment to the said Dionisia Gil as a machine operator at a salary of \$50.00 a week, whereas, in truth and in fact, the said company was not willing to provide such employment to the said Dionisia Gil.

(Title 18, United States Code, Sections 1001, 2 and 3238)

SEVENTEENTH COUNT

The Grand Jury further charges:

On or about the 26th day of November, 1963, in a matter within the jurisdiction of the Foreign Service, United States Department of State, to wit, the application of Aura Martina Hernandez for an immigrant visa made to the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did make and use, and cause to be made and used, a false writing and document, knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, an affidavit of support, dated November 20, 1963 and signed by Faustino Gonzalez, stating that the said Faustino Gonzalez

INDICTMENT

had a savings account at the Manufacturers Hanover Trust Company, 3515 Broadway, New York, New York, with a credit balance of \$1,053.47 and that he had never previously executed an affidavit or promise of support on behalf of any person seeking entry into the United States, whereas, in truth and in fact, as the said defendant then and there well knew, the said Faustino Gonzalez did not have a savings account with a credit balance of \$1,053.47 deposited by and belonging to him and he had previously executed an affidavit or promise of support on behalf of another person seeking entry into the United States.

(Title 18, United States Code, Sections 1001, 2 and 3238)

EIGHTEENTH COUNT

The Grand Jury further charges:

On or about the 10th day of September, 1962, at the American Consulate, Santa Domingo, Dominican Republic, AMADEA AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did obtain, accept and receive, and cause to be obtained, accepted and received, an immigrant visa for Fabia Gomez deFelix, knowing the same to have been procured by fraud, in that the said defendant

INDICTMENT

submitted and caused to be submitted to the said consulate, in connection with the application of the said Fabia Gomez deFelix for the said visa:

a) a letter on the stationery of the Rayex Corporation, 133-30 37th Avenue, Flushing, New York, dated August 13, 1962 and signed Ralph Samuels, stating that the said corporation was willing to provide the said Fabia Gomez deFelix with permanent employment on their factory staff at a starting salary of \$48.00 a week; and

b) an affidavit of support, dated September 1, 1962 and signed by Leonalo Feliz, stating that the said Leonalo Feliz had a savings account with the Chemical Bank, New York Trust Company, Broadway and 102nd Street, New York, New York, with a credit balance of \$1,560.82; whereas, in truth and in fact, as the said defendant then and there well knew, the said corporation was not willing to provide such employment to the said Fabia Gomez deFelix, and the said Leonalo Feliz did not have a savings account with a credit balance of \$1,555.52 deposited by and belonging to him.

(Title 18, United States Code, Sections 1546, 2 and 3238)

NINETEENTH COUNT

The Grand Jury further charges:

On or about the 25th day of June, 1963, at the American Consulate Santa Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES,

INDICTMENT

also known as Amadeo Luciano .the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did obtain, accept and receive, and cause to be obtained, accepted and received, an immigrant visa for Fredesvinda Feliz, knowing the same to have been procured by fraud, in that the said defendant submitted and caused to be submitted to the said consulate, in connection with the application of the said Fredesvinda Feliz for the said visa:

a) a letter on the stationery of Bruschi & Grado, Furniture Manufacturing Company, Inc., 136-140 Jackson Street, Brooklyn, New York, dated June 14, 1963 and signed M. Moranti, stating that the said company was willing to provide the said Fredesvinda Feliz with permanent employment as a factory room helper at a starting salary of \$50.00 a week; and

b) an affidavit of support, dated June 5, 1963 and signed by Leonelo Feliz, stating that he had a savings account with the Chemical Bank, New York Trust Company, at 102nd Street and Broadway, New York, New York, with a credit balance of \$2,017.50; whereas, in truth and in fact, as the said defendant then and there well knew, the said corporation was not willing to provide such employment, and the said Leonelo Feliz did not have a savings account with a credit balance of \$2,017.50 deposited by and belonging to him.

(Title 18, United States Code, Sections 1546, 2 and 3238)

INDICTMENT

TWENTIETH COUNT

The Grand Jury further charges:

On or about the 4th day of June, 1964, at the American Consulate, Santo Domingo, Dominican Republic, AMADEO AUGUSTO LUCIANO-SANTELISES, also known as Amadeo Luciano, the defendant, who was arrested in the Southern District of New York, unlawfully, wilfully and knowingly did obtain, accept and receive, and cause to be obtained, accepted and received, an immigrant visa for Nelson Rafael Feliz, knowing the same to have been procured by fraud, in that the said defendant submitted and caused to be submitted to the said consulate, in connection with the application of the said Nelson Rafael Feliz for the said visa, an affidavit of support, dated February 4, 1964 and signed by Leonelo and Norma Feliz, stating that the said Leonelo Feliz had a savings account with the Chemical Bank, New York Trust Company, New York, New York, with a credit balance of \$908.97, whereas, in truth and in fact, as the said defendant then and there well knew, the said Leonelo Feliz did not have a savings account with a credit balance of \$908.97 deposited by and belonging to him.

(Title 18, United States Code, Sections 1546, 2 and 3238)

COUNTS 21 to 27

The Grand Jury further charges:

On or about the date hereinafter set forth, in the Southern District of New York, RAYMOND COLON and AMADEO AUGUSTO LUCIANO-SANTELISES,

INDICTMENT

also known as Amadeo Luciano, the defendants, unlawfully, wilfully and knowingly did make and cause to be made a false certificate, acknowledgement and statement concerning the appearance before the said RAYMOND COLON, the taking of an oath and affirmation, and the signature, attestation and execution, by the person hereinafter specified as affiant, with respect to an affidavit of support on behalf of the alien hereinafter named which affidavit was required and authorized by the laws relating to immigration, naturalization, citizenship and registry of aliens, such false certificate, acknowledgement and statement being to the effect that the affiant had appeared before the said RAYMOND COLON, and had sworn to the truth of the contents of and had signed, attested to and executed the said affidavit of support in his presence, whereas, in truth and in fact, as the defendants then and there well knew, the said person had not appeared and so sworn and signed, attested to and executed the said affidavit:

<u>COUNT</u>	<u>DATE</u>	<u>AFFIANT</u>	<u>ALIEN</u>
21	January 8, 1962	Griselda del Carmen Guerrero	Ramon Antonio Fabian
22	May 7, 1962	Genaro Placido	Antonio Breton-Lopez
23	April 12, 1963	Carmen Sanchez de Caminero	Altagracia A. Lara
24	April 24, 1963	Lucila Urena-Valdez	Dionisia Gil
25	May 13, 1963	Ramon Nolasco	Crisalda Villavizar de Nolasco

INDICTMENT

26	June 5, 1963	Leonelo Feliz Norma Feliz	Fredesvinda Feliz
27	July 23, 1963	Genaro Placido	Antonio Breton- Lopez

(Title 18, United States Code, Sections 1015 and 2)

Foreman

ROBERT M. MORGENTHAU
United States Attorney

AFFIDAVIT OF ROBERT MITCHELL

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ROBERT MITCHELL, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York, and admitted to practice in the United States District Court for the Southern District of New York.

2. On December 7, 1965, I appeared in the United States District Court for the Southern District of New York, as the attorney for Amadeo Augusto Luciano Santelises, who was charged, in a twenty-seven count indictment, with violation of Title 18, U.S.C. Sections 1001, 2, 3238 and 1546 (Docket No. 65 Cr. 653). Mr. Luciano had previously pleaded not guilty to all such counts.

3. On December 7, 1965, upon my advice, Amadeo Augusto Luciano-Santelises changed his plea from not guilty to guilty to fourteen counts of the indictment, three of which contained an allegation of violation of 18 U.S.C. Section 1546.

4. In my conferences with Mr. Luciano prior to his decision to enter a plea of guilty to fourteen counts of the indictment, three of which alleged a violation of 18 U.S.C. 1546, I never informed him that, as an alien present in the United States, he would be

AFFIDAVIT OF ROBERT MITCHELL

subject to deportation, upon order of the Attorney General, after a conviction under 18 U.S.C. Section 1546. To my knowledge, he was completely unaware of such consequence.

s/Robert Mitchell
ROBERT MITCHELL

Sworn to
December 6th, 1973

MEMORANDUM OPINION

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SAME TITLE

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TENNEY, J.

Santelises, having filed a petition pursuant to 28 U.S.C. Section 1651(a), has moved for an order vacating the judgment of conviction and sentence for counts 18 and 19 of indictment 65 Cr. 653 on the grounds that (a) his plea of guilty to those counts was not knowingly and voluntarily tendered and (b) he was denied effective assistance of counsel. For the reasons stated infra, the petition is denied.

The relevant facts are as follows. On December 27, 1965, petitioner, appearing with counsel, entered pleas of guilty to fourteen counts of a 27-count indictment, including counts 18 and 19, which charged him with fraudulent procurement and misuse of visas and other entry documents, in violation of 18 U.S.C. Sections 1546 and 2. On January 28, 1966, he was sentenced to concurrent one-year terms of probation on all fourteen counts. No appeal was taken from the judgment of conviction.

Some five months after he was sentenced, the Immigration and Naturalization Service of the Department

MEMORANDUM OPINION

of Justice commenced deportation proceedings against petitioner, a citizen of the Dominican Republic residing in the United States. The proceedings were instituted pursuant to 8 U.S.C. Section 1251(a)(5), which authorizes the deportation of any alien who has been convicted of a violation of 18 U.S.C. Section 1546. On October 9, 1967, petitioner was ordered deported.

On April 10, 1972, petitioner asked this Court to set aside his pleas of guilty to counts 18 and 19. He argued that his plea to each, entered before Fed. R. Crim. P. 11 became effective, was not knowingly and voluntarily tendered in that he was not informed by the Court or counsel that, as a consequence, he might be deported. Treating his petition as one for a Writ of Error Coram Nobis, 28 U.S.C. Section 1657(a), the Court rejected his claim and dismissed the petition without a hearing. The dismissal was affirmed, United States v. Santelises, 476 F.2d 787 (2d Cir. 1973), on the grounds that the Court's failure to warn petitioner of the possibility of deportation was not a violation of due process and that the petition was otherwise without merit because petitioner had not affirmatively alleged that he was misled by counsel. As an independent ground for affirmance,

MEMORANDUM OPINION

Id. at 790 n. 3, the Second Circuit noted that petitioner had failed to submit an affidavit of counsel corroborating his allegation that he was unaware that deportation was a possible consequence of his plea. Grant v. United States, 451 F.2d 931 (2d Cir. 1971).

Except for the fact that petitioner has now submitted an affidavit from the attorney who represented him at the time he entered his pleas of guilty, the instant petition does not differ materially from the earlier petition. The accompanying affidavit represents that, prior to his entry of a guilty plea to counts 18 and 19, petitioner was not informed by his attorney that, because he was an alien, he might thereafter be subject to deportation. Additionally, petitioner's former attorney states that, to his knowledge, petitioner was not aware of such a consequence at the time he pled guilty.

Although the submission of this affidavit cures one of the defects in the earlier petition, the Court is nevertheless compelled to dismiss the instant petition.

First, it is fairly clear that, unless one alleges that one has been affirmatively misled by counsel, one's ignorance of the possibility of deportation as a consequence of a guilty plea (at least where that plea is not governed by Fed. R. Crim. P. 11)

MEMORANDUM OPINION

is not a sufficient ground for attacking that plea. United States v. Santelises, supra, 476 F.2d at 789-90. The cases upon which petitioner relies, see, e.g., Rye v. United States, 435 F.2d 177 (2d Cir. 1970), are readily distinguishable. They merely stand for the proposition that failure to apprise a defendant of all factors bearing upon his possible maximum sentence renders the guilty plea defective.

Second, counsel's mere nondisclosure of the possibility of deportation does not amount to a denial of effective assistance of counsel. United States v. Santelises, supra, 476 F.2d at 790. As in his earlier petition, Santelises has failed to allege any facts which, if true, would warrant the conclusion that his counsel affirmatively misled him.

Accordingly, the petition is denied in all respects.

So ordered.

Dated: New York, N.Y.
July 30, 1974

s/C. Tenney
U.S.D.J.

NOTICE OF APPEAL

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SAME TITLE

- - - - - X

Defendant, AMADEO AUGUSTO LUCIANO SANTELISES,
hereby appeals to the U.S. Court of Appeals for the
Second Circuit from the Order of Hon. Charles H. Tenney,
United States District Judge, denying defendant's
Petition for Writ of Error Coram Nobis, entered in
this action on the 30th day of July, 1974.

Dated: New York, N.Y.
September 24, 1974

FRIED, FRAGOMEN & DEL REY, P.C.
Attorneys for Defendant
515 Madison Avenue
New York, N.Y. 10022
Tel. (212) 688-8555

s/Martin L. Rothstein
MARTIN L. ROTHSTEIN
Of Counsel

TO: PAUL J. CURRAN
U.S. Attorney
Southern District of New York
Foley Square
New York, N.Y. 10007

STATE OF NEW YORK)

: SS:

COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of Nov. 1974 deponent served the within *Expendix* upon *M.S. Attorney*

attorney(s) for *Appellee*

in this action, at *Foley St*
NYC

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

[Signature]
ROBERT BAILEY

Sworn to before me, this

15 day of Nov. 1974

[Signature]
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976